

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

March 11, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

Consent To Sublease for Harbor Lease No. H-83-2, Kona Marine Holdings, LLC, a Delaware limited liability company, Lessee, Honokohau Small Boat Harbor, Kealakehe, North Kona, Island of Hawaii, Tax Map Key (3) 7-4-008-040.

APPLICANT:

Kona Marine Holdings, LLC ("Kona Holdings"), a Delaware limited liability company authorized to do business in Hawaii, whose business and mailing address is 111 East De La Guerra Street, Presidio Building, Santa Barbara, CA 93101, Lessee, as Sublessor, to the following Sublessee:

<u>Space No.</u>	<u>Name of Sublessee</u>	<u>Effective Date</u>
Retail Store	Kona Retail Ventures, LLC	Date Liquor License is issued (TBD)

LEGAL REFERENCE:

Section 171-36(a)(6), Hawaii Revised Statutes, as amended.

LEASE LOCATION AND AREA:

The premises located at Honokohau Boat Harbor, Kealakehe, Kona, Hawaii, together with an exclusive easement, both of which are more particularly described in attached Exhibit A, TMK (3) 7-04-08. By Amendment of Harbor Lease H-83-2 dated November 10, 1983, the demised premises was relocated thirty (30) feet south of the previous location.

Fast land, containing an area of 10,000 square feet or 0.230 acre, and submerged land exclusive easement, situated in berthing area 3, adjacent to the western boundary of the fast land area, containing an area of 3,300 square feet or 0.076 acre, as shown in EXHIBIT B.

ITEM J-4

SUBLEASE LOCATION AND AREA:

Kona Retail Ventures, LLC:
Location: Retail Store, first floor
Area: Containing approximately 1,573 square feet

TRUST LAND STATUS:

Section 5(B) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:
YES ☐ NO ☒

LEASE CHARACTER OF USE:

The lease, relative to "use", reads: "... [F]or the construction of certain improvements which shall be used principally for a marine fueling facility and service station..."

SUBLEASE CHARACTER OF USE:

The sublease, relative to its use reads: "[F]or purposes of operating a retail sundry store ..."

TERM OF LEASE:

Original term of 35 years, commencing on November 27, 1984 and expiring on November 26, 2019. On August 28, 2009, as Item J-2, the Board approved an extension of 20 years, commencing on November 27, 2019 and expiring on November 26, 2039.

TERM OF SUBLEASE:

The sublease, relative to its term reads: "The term of this Sublease shall be for one (1) year beginning upon the day of issuance of a Temporary Liquor License to Sublessee by the Liquor Commission of the County of Hawaii (the "**Commencement Date**"); provided that if no such Temporary Liquor License is issued to Sublessee within ninety (90) days of the Effective Date, this Sublease shall be null and void and have no further effect, and provided further that Sublessor shall have the right to terminate this Sublease at any time upon five (5) days notice to Sublessee."

ANNUAL LEASE RENTAL:

Currently \$12,750.00 per annum or 5% of the annual gross receipts, whichever is greater. The next rental reopening is scheduled for November 27, 2009 and pending at this time.

SUBLEASE RENTAL:

The sublease, relative to its amount of rent reads: "During the term of this Sublease, Sublessee shall pay to Sublessor as monthly rent for the use and occupancy of the Premises at the time and in the manner hereinafter provided the following sum of money (the "**Base Rent**"); \$2,500.00 per month."

DCCA VERIFICATION:

SUBLESSOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

SUBLESSEE:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

REMARKS:

On August 28, 2009, The Board approved the Consent to Assignment, Mortgage, and Amendment to Extend the Lease Term, for Harbor Lease No. H-83-2, from Kona Fuel & Marine, Inc., Assignor, to Kona Marine Holdings, LLC, (KMHLLC) Assignee. KMHLLC previously expressed that it might renegotiate, amend and update subleases once its management was in place, after the assignment was complete, and that it would request applicable consents at such time. KMHLLC is in the process of upgrading the facility, recently completed the new pier and working to rent the commercial units to viable tenants. KMHLLC is requesting consent to sublease for its new subtenant, Kona Retail Ventures, LLC. In addition, KMHLLC has asked for approval to continue to sell beer and wine. KMHLLC explained that the Fish Dock Store would cease operations and agreed to transfer its liquor license and inventory under Kona Fuel and Marine, Inc. to Kona Retail Ventures, LLC. An application has been submitted to the County of Hawaii, Office of Liquor Control and is currently pending.

The subletting provision provides:

"Subletting. That the LESSEE shall not rent or sublet the whole or any portion of the premises, without written approval of the Director. The Director shall have the right to deny uses contrary to the primary purpose of the lease, to review and approve the rent to be charged to the proposed sublessee and revise the

rent and rent structure charged to the LESSEE by the LESSOR in light of the rental rate charged to the sublessee by the LESSEE; and to include such other terms and conditions prior to any approval by the Director; provided, further, that the rent may not be revised downward."

"The LESSOR shall expedite the obtaining of the approval of all marine related subleases from the Director of Transportation and the Department of Land and Natural Resources."


RECOMMENDATION:

That the Board consent to the sublease between Kona Marine Holdings, LLC and Kona Retail Ventures, LLC, and approve of the sale of beer and wine by Kona Retail Ventures, LLC for the retail store location.

Subject to the following terms and conditions:

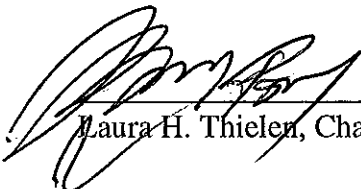
1. Any amendments to the Sublease must be approved in writing by the Director;
2. Sublessee must comply with all Federal, State, and County requirements;
3. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
4. Review and approval by the Department of the Attorney General; and
5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Edward R. Underwood, Administrator

APPROVED FOR SUBMITTAL:



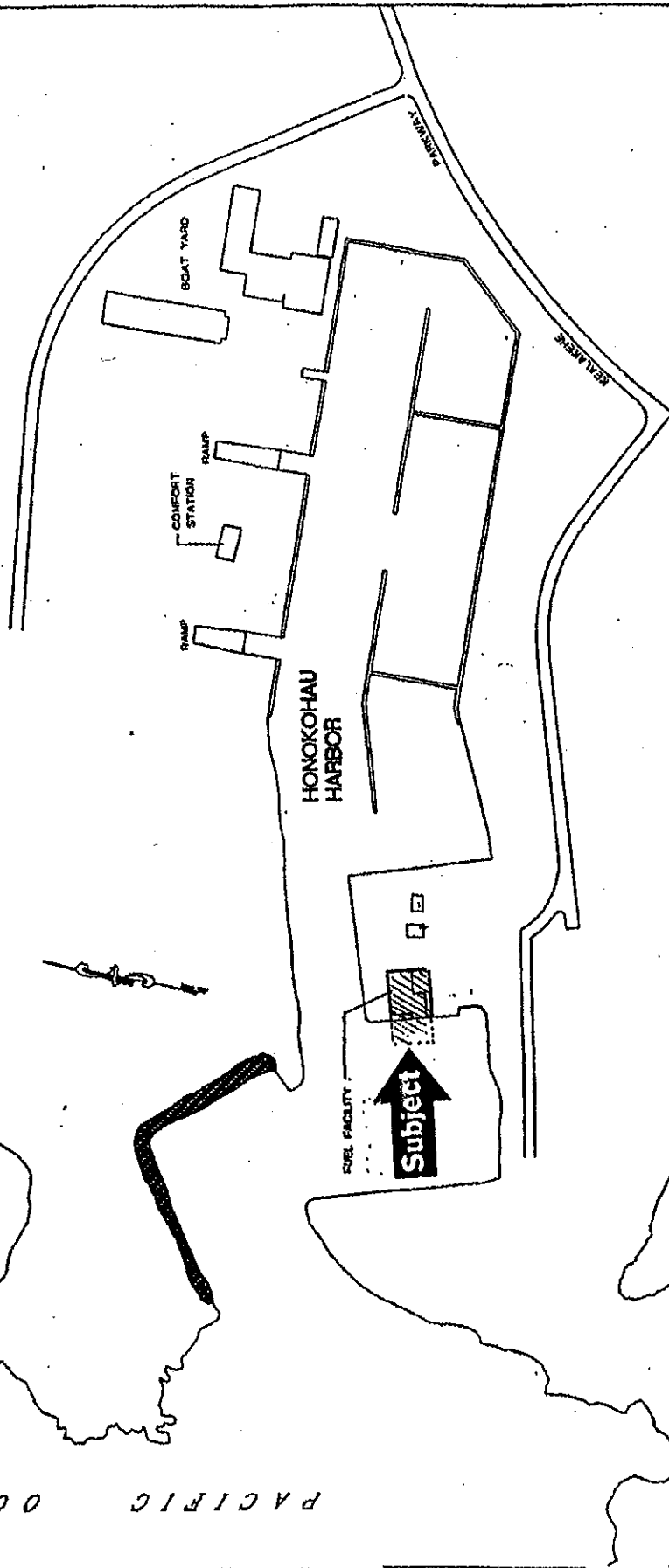
Laura H. Thielen, Chairperson

HONOKOHAU SBH

DATE OF PHOTO: OCTOBER 12, 1991
TAX MAP KEY: 7-4-8



PACIFIC OCEAN



DOCUMENTATION OF FACILITIES FOR BOATING PROGRAM TRANSFER TO THE DEPARTMENT OF LAND AND NATURAL RESOURCES			
PROJECT:	DATE OF PHOTO:	DEPARTMENT OF TRANSPORTATION	
ACR:	DEPARTMENT OF TRANSPORTATION	HONOKOHAU	
SHEET TITLE:	HONOKOHAU ISLAND OF HAWAII		
BY:	RMTC		
A LAND USE CORRELATION AND MANAGEMENT PLAN FOR THE HONOKOHAU ISLAND OF HAWAII August 1991			

